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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,378	12/03/2003	Paul J. Christensen	3149-6216US	6386
24247	7590	09/11/2006	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/728,378

Applicant(s)

CHRISTENSEN ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 811, 13, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gurley (2,098,823), Berzon (D328,426), Gruber et al (D157,043), Schmidt (D200,812), and Stock (D59,438), further in view of Morrison (1,499,183), Petaja (D100,122), Petaja (D96,413), and Reid (D130,876).

In regard to claim 1, Gurley discloses a container comprising a base defining a part of a receptacle and a cover configured to be disposed over the base wherein the cover defines a part of the receptacle and is configured to receive and removably retain at least an upper edge of the base. It is noted in this regard that claim 1 employs language that would make it appear that the base and cover define two separate receptacles. They do not. As disclosed, the base and cover define two parts of the same receptacle, which is what Gurley discloses. Claim 1 also recites that the "exterior" (presumably of the cover) has the appearance of a bakery good. The container of Gurley has the appearance of a real-life, recognizable article such as a lemon or an orange. The particular appearance one chooses to impart to a container is seen to have been an obvious matter of choice and/or design. In any case, as evidenced, for example, by Berzon, it was conventional in the art to provide a container, and specifically a box, with an exterior that has the appearance of a bakery good (e.g., a piece of cake or pie). Note that although Berzon does not specifically show cover from

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base, Berzon shows the entire container/box is configured to have the appearance of a bakery product. Gruber et al, Schmidt, and Stock are relied on as further evidence of containers that are configured to have the appearance of other real-life, recognizable objects wherein the covers comprise at least part of the simulation of the object. To modify Gurley and provide the cover with at least some of the appearance of the object being simulated would therefore have been obvious. Morrison, Petaja ('122), Petaja ('413), and Reid ('876) are relied on as further evidence of the conventionality of containers simulating the appearance of recognizable objects. In regard to claim 2, as noted above, the art taken as a whole discloses it was conventional in the art to provide both the cover and the base, i.e., the entire container, with the appearance of a recognizable object. In regard to claim 3, the particular bakery good selected to simulate is seen to have been an obvious matter of choice and/or design. As noted above, Berzon discloses a piece of cake or pie. In regard to claim 8, which recites metal, the particular conventional material of construction one chooses to use is seen to have been an obvious result effective variable. Metal containers are, of course, notoriously old in the art. In regard to claim 9, claim 9 additionally adds that the container has "an appearance of an item with a fragrance or a flavor" and that the container has contents therein which has at least one of a fragrance and a flavor that represents that of the item represented by the container simulation. This recitation is taught by Gurley. For example, Gurley teaches a container that simulates by its form, color and texture, a natural object such as a fruit or a nut, such as a lemon, which is indicative by its form and color of the nature of the contents of the container, such as a composition which

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can be a lemon flavored beverage or candy. Note that Gurley is therefore seen to be a generic teaching of providing a container with an appearance that simulates a recognizable article which appearance suggests to the consumer some relationship to the content of the container, such as flavor. Claim 10 is rejected for the reasons given above in regard to claim 2. In regard to claim 13, Gurley teaches candy. In regard to claim 16, Gurley discloses a plurality of water absorbent particles. In regard to claim 20, Gurley in view of the art taken as a whole teaches it would have been obvious to perform the recited steps. In fact, Gurley alone discloses all of the recited steps, except, possibly, providing the cover with the external appearance of an item, which as discussed above, is taught by the art taken as a whole.

Claims 4-7,12,14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim1 above, and further in view of Pappas (2003/0151161) and Dearth (6,371,755).

Claim 4 differs from Gurley in that the contents have at least one of a fragrance and flavor that corresponds to the bakery good represented on the container. As noted above, Gurley clearly and fairly teaches that it would have been obvious to provide a container with some recognizable simulation that would correspond to some relationship to the contents such as flavor. To therefore provide the package with a content that has a flavor or fragrance that corresponds to the simulation of the container, or more properly provide the container with a simulation that corresponds to the flavor or aroma of a bakery good if the contents to be packaged has the aroma or fragrance of a bakery good would therefore have been obvious. As noted previously, bakery good simulations

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are conventional, and Pappas can be relied on as further evidence that even none bakery goods, such as candles, that are given an appearance to simulate bakery goods, can be provided with an aroma that corresponds to the bakery good. Dearth can be relied on to teach the conventionality of packaging bakery good simulations in a container. In regard to claims 5 and 6, the particular conventional article one chooses to package is seen to have been an obvious matter of choice. In regard to claim 7, the art taken as a whole teaches water absorbent particles and wax. Claims 12,14 and 15 are rejected for the reasons given above.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gurley.

In using the container of Gurley, one would inherently perform the method steps recited in claims 17 and 18.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gurley.

Claim 19 recites that the receptacle is cleaned and other contents are introduced into the receptacle. It is a notoriously conventional household expedient to reuse containers after one cleans out a used container, and to perform such a step in Gurley would therefore have been obvious.

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The remainder of the references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
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